

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5661

PETITION OF HAROLD SNIDER

(Hearing held October 24, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, November 14, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The proposed construction of a carport addition reduces the sum of both side yards to eighteen (18) feet, requiring a variance of seven (7) feet. The required sum of both side yards is twenty-five (25) feet.

Mr. and Mrs. Snider appeared at the public hearing with Edward Moreno, the petitioners' contractor.

The subject property is Lot 2, Block 25, Manor Woods Subdivision, located at 4921 Bel Pre Road, Rockville, Maryland, in the R-90 Zone (Tax Account No. 01440321).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a carport to provide coverage for a single car.
2. Mr. Snider testified that the carport is needed because he is blind, and that the carport would provide a covered access to his residence. Mr. Snider testified that carport is needed because during inclement weather, the ground does not provide echo-location, which he needs to detect obstacles.
3. Mr. Snider testified that the carport could not be located in the western side yard because a bus stop is located near this section of the property. Mr. Snider testified that a curb cut could not be installed to provide access to the western side yard because an existing curb cut is located at the southern boundary to provide access to the eastern side yard. The carport would be built on the existing asphalt driveway.
4. Mr. Moreno testified that the neighbor most impacted by the carport, Lot 3, is located approximately 14 feet from the shared eastern boundary. Mr. Moreno testified that he has spoken with each of the petitioners' adjoining neighbors and that the neighbors had no concerns about the requested variance. An entrance to the residence is also located on the eastern side of the residence.

5. Mr. Moreno testified that he consulted the Department of Permitting Services (DPS) to determine the required setbacks and that he believed the carport met the County's specifications, but later determined that the carport would require a variance from the sum of both side yards.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds as follows:

1. The requested variance does not comply with the applicable standards and requirements of the Montgomery County Zoning Ordinance set forth in Section 59-G-3.1.
2. "The Fair Housing Amendments Act (FHAA) of 1988 makes it unlawful to discriminate against 'any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling' on the basis of that person's handicap. 42 U.S.C.A. §3604(f)(2). Discrimination is defined to include refusing to make reasonable accommodations in 'rules, policies, practices, or services' when necessary to afford a person with a handicap 'equal opportunity to use and enjoy a dwelling'. 42 U.S.C.A. §3604(F)(3(B)." *Trovato v. City of Manchester*, 992 F. Supp. 493, 497 (D.N.H. 1997).
3. "Under the FHAA, an accommodation is 'necessary' to afford 'equal opportunity' when plaintiffs have shown that but for the accommodation, they 'will be denied an equal opportunity to enjoy the housing of their choice'." *Trovato* at 497, citing *Smith & Lee Assocs. v. City of Taylor*, 102 F.3d at 795 (6th Cir. 1996).
4. "FHAA's goal of assisting person with disabilities should be weighed against the costs or burdens of compliance imposed on the local governing body." *Trovato* at 497.
5. The reasonable accommodation requirement of the FHAA applies to Section 59-G-3.1 of the Montgomery County Zoning Ordinance. See *Trovato* at 497, citing *Case Marle, Inc. v. Superior Court of Puerto Rico*, 988 F.2d 252, 257 n.6 (1st Cir.1993). "Courts interpreting the reasonable accommodation provision of the [FHAA] have ruled that municipalities . . . must change, waive, or make exceptions in their zoning rules to afford people with disabilities the same opportunity to housing as those who are without disabilities." *Trovato* at 497, citing *Hoysons, Inc. v. Township of Brick*, 89 F. 3d 1096, 1103 (3rd Cir. 1996).
6. The FHAA makes it unlawful to refuse Harold Snider a reasonable accommodation where it is necessary to afford him the equal opportunity to use and enjoy the carport on his property.

7. The requested variance from the sum of both side yards to permit the construction of a carport addition would not require a fundamental alteration of the regulations of Montgomery County, or impose an undue financial or administrative burden on Montgomery County.
8. Title II of the ADA prohibits a public entity from discrimination against an individual on the basis of disability, or from excluding such an individual from public services, programs or activities. 42 U.S.C.A. § 12132. See, *Trovato* at 498.
9. “Although ‘activity’ is not explicitly defined in Title II of the ADA, it has been held to include zoning decisions by a city ‘because making such decisions is a normal function of a governmental entity.’ “ *Trovato* at 499, citing *Innovative Health Sys. v. City of White Plains*, 117 F.3d 37, 44 (2nd Cir. 1997).
10. “The conclusion that Title II of the ADA applies to zoning decisions is also supported by the implementing regulations issued by the Department of Justice and its Technical Assistance Manual. Under the regulations, a city must reasonably modify its policies when ‘necessary to avoid discrimination on the basis of disability’, unless it can show that the modifications ‘would fundamentally alter the nature of the service, program or activity.’ 28 C.F.R. §35.130(b)(7)(1997).” *Trovato* at 499.
11. The Board finds that the variance request meets the standards and requirements set forth in The Fair Housing Amendments Act of 1988 and in Americans with Disabilities Act .
12. The Board finds that the record provides sufficient evidence that the resident of the dwelling is blind, necessitating a carport to provide echo-location for obstacle detection.
13. The Board finds that this variance is a reasonable accommodation to allow Harold Snider the use of a carport addition on the premises in a manner that is directly related to his health and welfare.

Accordingly, the requested variance of seven (7) feet from the required twenty-five (25) foot sum of both side yards setback for the construction of a carport addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board’s Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 14th day of November, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.